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December 20, 2012

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BY FACSIMILE AND U.S. MAIL

Simone Pang Gancayco
Field Attorney
National Labor Relations Board
Region 31 Office
11150 W. Olympic Blvd., Suite 700
Los Angeles, CA 90064-1825
Fax: (310) 235-7420

Re: Charging Parties : (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)
Our Client : The Gentle Barn Foundation, Inc.
NLRB Case No. : 31-CA-093108
Our File No. : (b) (6), (b) (7)(C)

Dear Ms. Gancayco:

As you know, this office represents The Gentle Barn Foundation, Inc. ("TGB") in connection with the above-captioned unfair labor practice charge. The following is TGB's position statement in response to the NLRB's amended charge, as well as the matters raised in your November 30, 2012, correspondence. As set forth below, the charge against TGB lack factual and legal merit, and should be dismissed absent withdrawal.

A. Statement of Facts

1. Background on TGB

TGB is a non-profit organization, operated by (b) (6), (b) (7)(C) (TGB's (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (TGB's (b) (6), (b) (7)(C) Pursuant to its website, TGB's mission is "to rescue, rehabilitate and give sanctuary to abused animals. Through the interaction with our animals people learn reverence for all life." TGB works with disadvantaged and at-risk youth, special needs children and educational groups. TGB also invites and indeed, relies upon community volunteers to assist with the care and upkeep of the animals.

TGB's Board is currently comprised of the following six (6) Board of Directors: (1) (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C) (2) (b) (6), (b) (7)(C) (3) (b) (6), (b) (7)(C) (4) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (5) (b) (6), (b) (7)(C) and (6) (b) (6), (b) (7)(C) At the time of (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) ("(b) (6), (b) (7)(C) termination, TGB's board was comprised of the following Board of

Directors: (1) (b) (6), (b) (7)(C); (2) (b) (6), (b) (7)(C); (3) (b) (6), (b) (7)(C); (4) (b) (6), (b) (7)(C); (5) (b) (6), (b) (7)(C) and (6) (b) (6), (b) (7)(C)

2. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Supervisory Status

As TGB is operated by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) both have supervisory status under 29 U.S.C. § 152 (11). Specifically, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) both have the authority, in the interest of TGB, to direct TGB's employees, adjust their grievances, and recommend the discharge or discipline of TGB's employees to TGB's Board.

3. (b) (6), (b) (7)(C) Employment With TGB

(b) (6), (b) (7)(C) is a former employee of TGB. A true and correct copy of (b) (6), (b) (7)(C) personnel records is attached hereto as Exhibit A. We note, however, that the records may not be complete as TGB believes that (b) (6), (b) (7)(C) may have taken a portion of (b) (6), (b) (7)(C) records after being terminated by TGB. (b) (6), (b) (7)(C) began working for TGB in (b) (6), (b) (7)(C) as the (b) (6), (b) (7)(C) of TGB. (b) (6), (b) (7)(C) held that position until (b) (6), (b) (7)(C) 2012, when (b) (6), (b) (7)(C) was terminated for (b) (6), (b) (7)(C) poor performance by the (b) (6), (b) (7)(C) of TGB.

According to TGB, (b) (6), (b) (7)(C) was responsible for (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) At the time of (b) (6), (b) (7)(C) hiring, TGB had been operating in an informal manner such that there were no formal operating protocols in place. During the interview process with (b) (6), (b) (7)(C) for the (b) (6), (b) (7)(C) position, TGB explained to (b) (6), (b) (7)(C) how important it was for (b) (6), (b) (7)(C) new ways for TGB to (b) (6), (b) (7)(C) the small, grassroots nonprofit toward the next level (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) assured TGB that (b) (6), (b) (7)(C) understood the purpose of the position, and that if hired, (b) (6), (b) (7)(C) would (b) (6), (b) (7)(C) within 3 to 6 months. After being hired, however, (b) (6), (b) (7)(C) failed to (b) (6), (b) (7)(C) for TGB. Additionally, (b) (6), (b) (7)(C) attempts at (b) (6), (b) (7)(C) to TGB.

Moreover, (b) (6), (b) (7)(C) failed to provide TGB with reports of (b) (6), (b) (7)(C) progress. According to TGB, (b) (6), (b) (7)(C) failure to report was a constant battle that was never resolved and was one of the reasons (b) (6), (b) (7)(C) terminated (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) refused to report to (b) (6), (b) (7)(C) as well. TGB also had concerns about (b) (6), (b) (7)(C) non-performance, bad attitude, and insubordinate behavior. In one instance, (b) (6), (b) (7)(C) was asked to attend an event on behalf of TGB. According to TGB, (b) (6), (b) (7)(C) showed up late for the event, ignored (b) (6), (b) (7)(C), and left early from the event. Two weeks prior to (b) (6), (b) (7)(C) termination, (b) (6), (b) (7)(C) refused to attend another event. Despite TGB's repeated requests, (b) (6), (b) (7)(C) failed to (b) (6), (b) (7)(C).

When (b) (6), (b) (7)(C) was hired, TGB instructed (b) (6), (b) (7)(C) to transition employees from independent contractors to W-2 employees, including (b) (6), (b) (7)(C) position. Despite numerous meetings in this regard, (b) (6), (b) (7)(C) still had not completed the task. Because (b) (6), (b) (7)(C) was concerned as to whether (b) (6), (b) (7)(C) would ever complete this task, (b) (6), (b) (7)(C) instructed (b) (6), (b) (7)(C) to contact ADP to begin the process. The W-2's were put into effect as of January 1, 2012. Also, (b) (6), (b) (7)(C) was asked to implement an electronic accounting program like QuickBooks, and a filing system in the office, but failed to complete both tasks.

On (b) (6), 2012, (b) (6), (b) (7)(C) to the alleged concerted activity, (b) (6), (b) (7) expressed in a Board meeting that (b) (6) had great concerns about (b) (6), (b) (7)(C) because what (b) (6), (b) (7) was hired to do and the level in which (b) (6), (b) (7) was compensated did not match with what (b) (6), (b) (7) seemed (b) (6), (b) (7) was actually doing. Also, (b) (6), (b) (7) was concerned about (b) (6), (b) (7)(C) bad attitude and work ethic, and wanted to terminate (b) (6), (b) (7). TGB repeatedly requested that (b) (6), (b) (7)(C) provide them with a list of (b) (6), (b) (7) daily job responsibilities; however, (b) (6), (b) (7)(C) did not furnish this information. Finally, on (b) (6), (b) (7)(C) 2012, (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) to obtain an understanding of (b) (6), (b) (7) job duties and to discuss (b) (6), (b) (7) poor performance. (b) (6), (b) (7)(C) still failed to provide (b) (6), (b) (7) with this information, and was "nasty/confrontational" at the meeting. In light of (b) (6), (b) (7)(C) failure to perform (b) (6), (b) (7) job functions, and (b) (6), (b) (7) insubordinate behavior, (b) (6), (b) (7) terminated (b) (6), (b) (7)(C).

4. (b) (6), (b) (7)(C) Employment With TGB

(b) (6), (b) (7)(C) who worked as an (b) (6), (b) (7)(C) for TGB, commenced (b) (6), (b) (7)(C) employment with TGB in 2011. A true and correct copy of (b) (6), (b) (7)(C) personnel records is attached hereto as Exhibit B. Like with (b) (6), (b) (7)(C) these records may not be complete, as TGB has indicated that (b) (6), (b) (7)(C) may have taken a portion of (b) (6), (b) (7)(C) records with (b) (6), (b) (7)(C) upon termination. (b) (6), (b) (7)(C) was responsible for completing discrete tasks assigned by (b) (6), (b) (7)(C). Such tasks included (b) (6), (b) (7)(C). On (b) (6), (b) (7)(C) 2012, (b) (6), (b) (7) met with (b) (6), (b) (7)(C). During this meeting, (b) (6), (b) (7)(C) got into a dispute with (b) (6), (b) (7)(C) regarding a prior instance where (b) (6), (b) (7)(C) had an issue with (b) (6), (b) (7), and (b) (6), (b) (7)(C) purportedly "didn't back (b) (6), (b) (7) up." (b) (6), (b) (7) stated that (b) (6), (b) (7) was offended by (b) (6), (b) (7)(C) actions. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) got into a dispute in this regard, and the discussion deteriorated quickly. During this discussion, (b) (6), (b) (7)(C) exhibited rude behavior toward (b) (6), (b) (7), particularly toward (b) (6), (b) (7)(C). Given (b) (6), (b) (7) insubordinate and confrontational behavior, (b) (6), (b) (7) terminated (b) (6), (b) (7)(C) at this meeting.

B. Legal Argument

1. The NLRB Does Not Have Jurisdiction Over TGB Because TGB Is Not Engaged In Commerce Within The Meaning Of 29 U.S.C. §152(6)-(7)

Pursuant to 29 U.S.C. § 160(a), the NLRB has statutory jurisdiction over private sector employers that are engaged in commerce. "Commerce," as defined in 29 U.S.C. §152(6), means trade, traffic, commerce, or transportation among the several states. An employer can also be found to be engaged in commerce if its business "affects commerce." Pursuant to 29 U.S.C. §152(7), "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce. For non-retailers, the NLRB takes jurisdiction when the amount of goods sold or services provided by the employer out of state ("outflow") or purchased by the employer out of state ("inflow") is at least \$50,000 annually. *Blankenship and Associates, Inc., et al.* (1993) 306 NLRB 205.

As indicated above, TGB is a non-profit organization dedicated to rescuing, rehabilitating, and caring for abused animals. Its principal office and place of business is located in Santa Clarita, California. TGB is engaged in the business of rescuing and caring for abused animals, and rescues the majority of these animals locally. Additionally, TGB purchases the hay and feed for its animals, as well as the other goods it uses to care for its animals, from local businesses. Because TGB does not provide services out of state, or purchase goods from out of state

businesses, TGB is not engaged in commerce within the meaning of 29 U.S.C. §152(6)-(7), and the NLRB does not have jurisdiction over this charge.

2. TGB Is Unable To Assert a Position With Respect to Claimants' Unlawful Surveillance Claim

TGB is presently unable to assert a position or produce evidence with respect to claimants' unlawful surveillance claim due to the legal implications on the ongoing Attorney General's investigation.

3. Retaliation Claim

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) allege that they were terminated in retaliation for engaging in concerted protected activity. 29 U.S.C. §158(a)(1) makes it unlawful for an employer to discharge an employee "if the employee was engaged in concerted activity (i.e. activity engaged in with or on the authority of other employees and not solely on her own behalf), the employer knew of the concerted nature of the employee's activity, the concerted activity was protected by the Act, and the discharge was motivated by the employee's protected converted activity." *Triangle Electric Co.* (2001) 335 NLRB 1037, 1038 (citing *Meyers Industries*, (1984) 268 NLRB 493, 497).

In order to succeed on a claim for retaliation under 29 U.S.C. §158(a)(1), the claimants must show that: (1) they engaged in concerted activity; (2) the employer knew of the concerted nature of the employees' concerted activity; (3) the converted activity was protected by the Act; (4) and the adverse employment action at issue (e.g., discharge) was motivated by the employee's concerted activity. *Meyers Industries*, (1984) 268 NLRB 493, 497 (citing *Wright Line*, (1980) 251 NLRB 1083).

Here, both claimants are unable to establish their claim for retaliation because they cannot establish that their discharge was motivated by the alleged concerted activity. As discussed above, TGB's decision to terminate (b) (6), (b) (7)(C) was based on (b) (6), (b) (7)(C) failure to complete (b) (6), (b) (7)(C) duties as (b) (6), (b) (7)(C) of TGB. (b) (6), (b) (7)(C) poor performance persisted for (b) (6), (b) (7)(C), and was addressed on numerous occasions by TGB. Each time TGB attempted to gain a better understanding of (b) (6), (b) (7)(C) duties, (b) (6), (b) (7)(C) refused to provide this information to (b) (6), (b) (7)(C), and acted in a rude and insubordinate manner. The fact that (b) (6), (b) (7)(C) termination was not motivated by the alleged concerted activity, which claimants' allege occurred on (b) (6), (b) (7)(C) 2012, and/or (b) (6), (b) (7)(C) 2012, is further evidenced by the fact that (b) (6), (b) (7)(C) discussed the issue of (b) (6), (b) (7)(C) poor performance and discussed (b) (6), (b) (7)(C) termination at TGB's (b) (6), (b) (7)(C) 2012, Board meeting. Due to (b) (6), (b) (7)(C) failure to perform (b) (6), (b) (7)(C) job duties, and (b) (6), (b) (7)(C) insubordinate behavior, TGB terminated (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2012. Thus, TGB's decision to terminate (b) (6), (b) (7)(C) was motivated by (b) (6), (b) (7)(C) poor performance and insubordinate behavior, and not by (b) (6), (b) (7)(C) alleged participation in concerted activity.

Furthermore, as we discussed above, (b) (6), (b) (7)(C) was terminated because of (b) (6), (b) (7)(C) insubordinate behavior toward (b) (6), (b) (7)(C), specifically (b) (6), (b) (7)(C) at the (b) (6), (b) (7)(C) 2012, board meeting. Given (b) (6), (b) (7)(C) insubordinate and confrontational behavior, (b) (6), (b) (7)(C) terminated (b) (6), (b) (7)(C). Thus, because TGB's decision to terminate (b) (6), (b) (7)(C) was motivated by (b) (6), (b) (7)(C) confrontational and insubordinate behavior at the (b) (6), (b) (7)(C) 2012, Board meeting, and not by (b) (6), (b) (7)(C) alleged participation

in concerted activity. Based on the evidence, it is clear that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) retaliation charge against TGB has no merit whatsoever.

We trust that the foregoing provides you sufficient information with respect to this matter. Should you have any questions or concerns, please feel free to contact our office.

Very truly yours,

KAUFMAN BORGEESE & RYAN LLP



Jeffrey S. Whittington
Sadaf Bathaee

EXHIBIT A

Employee W-4 Information Form

ADP

Employee Name

Address

(b) (6), (b) (7)(C)

Date of Birth

(b) (6), (b) (7)(C)

Social Security #

Redacted

Marital Status

(b) (6), (b) (7)(C)

Dependents

Rate of Pay

YEAR

Date of Hire

(b) (6), (b) (7)(C)

Additional Withholdings

(b) (6), (b) (7)(C)

*For employees using Direct Deposit, fill out below or attach
"VOIDED" personal check:*

Bank Name

Redacted

Bank Account Number

Redacted

Bank Routing Number

Redacted

Confidentiality Agreement

AGREEMENT (b) (6), (b) (7)(C) between first party, The Gentle Barn Foundation (TGBF), and second party, (b) (6), (b) (7)(C).

Whereas, the Company agrees to furnish the Undersigned access to certain confidential information relating to the affairs of TGBF solely for purposes of gathering information about TGBF.

Whereas, the Undersigned agrees to review, examine, inspect or obtain such information only for the purposes described above, and to otherwise hold such information confidential and secret pursuant to the terms of this agreement.

BE IT KNOWN, that TGBF has or shall furnish to the Undersigned certain confidential information, described on attached list, and may further allow suppliers, customers, employees or representatives of TGBF to disclose information to the Undersigned, only upon the following conditions:

1. The Undersigned agrees to hold all confidential or proprietary information or trade secrets ("information") or locations and wellbeing of animals in trust and confidence and agrees that it shall be used only for the contemplated purpose, and shall not be used for any other purpose or disclosed to any third party under any circumstances whatsoever.
2. No copies may be made or retained of any written information supplied.
3. At the conclusion of our discussions, or upon demand by TGBF, all information, including written notes, photographs, samples, products or memoranda shall be promptly returned to TGBF. Undersigned shall retain no copies or written documentation relating thereto.
4. This information shall not be disclosed to any employee, consultant or third party unless said party agrees to execute and be bound by the terms of this agreement, and disclosure by TGBF is first approved.
5. It is understood that the Undersigned shall have no obligation with respect to any information known by the Undersigned or as may be generally known within the industry prior to date of this agreement, or that shall become common knowledge within the industry thereafter.
6. The Undersigned acknowledges the information disclosed herein is proprietary or trade secrets and in the event of any breach, TGBF shall be entitled to injunctive relief as a cumulative and not necessarily successive or exclusive remedy to a claim for monetary damages and Undersigned will pay to TGBF an immediate settlement amount of \$5,000 in the event of a violation of this agreement occurs.
7. This agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.
8. This constitutes the entire agreement.

Signed this (b) (6), (b) (7)(C) day of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

Signature

Please Print: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Witness (First Party, for TGBF)

Please Print

Witness (Second Party, for TGBF)

Please Print

CALIFORNIA

DRIVER LICENSE

(b) (6), (b) (7)(C)

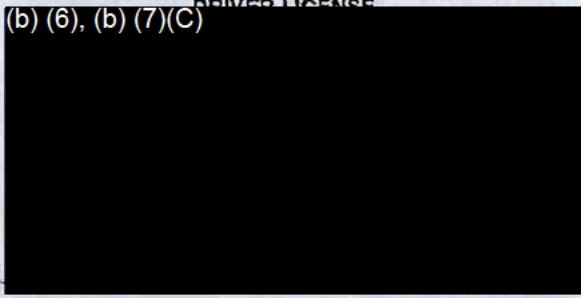


EXHIBIT B

Employee W-4 Information Form

ADP

Employee Name

(b) (6), (b) (7)(C)

Address

Date of Birth

(b) (6), (b) (7)(C)

Social Security #

Redacted

Marital Status

(b) (6), (b) (7)(C)

Dependents

(b) (6), (b) (7)(C)

Rate of Pay

(b) (6), (b) (7)(C)

per hour
(b) (6), (b) (7)(C)

Date of Hire

(b) (6), (b) (7)(C)

Additional Withholdings

*For employees using Direct Deposit, fill out below or attach
"VOIDED" personal check:*

Bank Name

Redacted

Bank Account Number

Redacted

Bank Routing Number

Redacted

Confidentiality Agreement

AGREEMENT entered into this _____ day of _____, 20____, between first party, The Gentle Barn Foundation (TGBF), and second party, (b) (6), (b) (7)(C)

Whereas, the Company agrees to furnish the Undersigned access to certain confidential information relating to the affairs of TGBF solely for purposes of gathering information about TGBF.

Whereas, the Undersigned agrees to review, examine, inspect or obtain such information only for the purposes described above, and to otherwise hold such information confidential and secret pursuant to the terms of this agreement.

BE IT KNOWN, that TGBF has or shall furnish to the Undersigned certain confidential information, described on attached list, and may further allow suppliers, customers, employees or representatives of TGBF to disclose information to the Undersigned, only upon the following conditions:

1. The Undersigned agrees to hold all confidential or proprietary information or trade secrets ("information") or locations and wellbeing of animals in trust and confidence and agrees that it shall be used only for the contemplated purpose, and shall not be used for any other purpose or disclosed to any third party under any circumstances whatsoever.
2. No copies may be made or retained of any written information supplied.
3. At the conclusion of our discussions, or upon demand by TGBF, all information, including written notes, photographs, samples, products or memoranda shall be promptly returned to TGBF. Undersigned shall retain no copies or written documentation relating thereto.
4. This information shall not be disclosed to any employee, consultant or third party unless said party agrees to execute and be bound by the terms of this agreement, and disclosure by TGBF is first approved.
5. It is understood that the Undersigned shall have no obligation with respect to any information known by the Undersigned or as may be generally known within the industry prior to date of this agreement, or that shall become common knowledge within the industry thereafter.
6. The Undersigned acknowledges the information disclosed herein is proprietary or trade secrets and in the event of any breach, TGBF shall be entitled to injunctive relief as a cumulative and not necessarily successive or exclusive remedy to a claim for monetary damages and Undersigned will pay to TGBF an immediate settlement amount of \$500,000 in the event of a violation of this agreement occurs.
7. This agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.
8. This constitutes the entire agreement.

Signed this _____ day of _____, 20____, (b) (6), (b) (7)(C)

Signature: (b) (6), (b) (7)(C)

Print Name: (b) (6), (b) (7)(C)

Signature: (b) (6), (b) (7)(C)

Print Name: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Witness: (b) (6), (b) (7)(C)

Witness: (b) (6), (b) (7)(C)

Witness: (b) (6), (b) (7)(C)

Witness: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Key
Accomplishments

(b) (6), (b) (7)(C)

Work experience

(b) (6), (b) (7)(C)

Education

(b) (6), (b) (7)(C)

Special Skills

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Thursday, July 28, 2011 12:22 PM
To: job-eanmf-2518024907@craigslist.org
Subject: (b) (6), (b) (7)(C) Opportunity
Attachments: (b) (6), (b) (7)(C).docx

Hello,

I am extremely interested in this incredible opportunity. I believe I have a strong work history back round that would enable me to excel in this environment. I would love to discuss in further and more specific detail why I feel I could be an asset to this organization given the opportunity. I am even more intrigued by this after reading it is a non-profit animal based organization. I've always had a special love of all types of animals and am a huge advocate for animal welfare as well as animal rights. I would love an opportunity to be able to contribute to a cause I am so incredibly passionate about. I have been a vegetarian for 10+ years and am in transition to becoming a vegan. Please feel free to contact me at any time. I look forward to hearing back.

Thank you,

(b) (6), (b) (7)(C)

- volunteers for G3

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Key
Accomplishments

• (b) (6), (b) (7)(C)
•

Work experience

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Education

(b) (6), (b) (7)(C)

Special Skills

(b) (6), (b) (7)(C)

CALIFORNIA
DRIVER LICENSE

(b) (6), (b) (7)(C)

